April 14, 2003

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Suite TW-A325
Washington, D.C. 20554

VIA ELECTRONIC FILING

RE: In the Matter of Schools and Libraries Universal Service Support Mechanism
CC Docket No. 02-6
Ex Parte Presentation

Dear Ms. Dortch:

      IBM is pleased to submit these comments in response to the *Notice of Proposed Rulemaking* in the above-cited docket. IBM applauds the Commission's initiative to evaluate and streamline the E-Rate program's procedures. As a member of the Information Technology Industry Council ("ITI"), IBM provided input to that organization's comments in this proceeding,[1] and our company supports ITI's broader agenda to improve our nation's education system. In order to assist the FCC's review, we offer these supplemental comments based on IBM's experience working both within the E-Rate program and independently to improve schools' technology nationwide. In these comments, IBM encourages the Commission to:

- Make E-Rate rules as simple and clear as possible, and E-Rate funding levels as predictable as possible;

- Promote more timely responses to funding applications;

- Form 470 filings should be considered as merely public notices to initiate competition, and FCC rules permit schools to use approved state or local procurement procedures;

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[1] *Reply Comments of the Information Technology Industry Council*, available at
www.itic.org/policy/fcc_020506.pdf.

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- Ensure that the Universal Service Administrative Company's Board of Directors includes experts on all types of products and services for which schools and libraries request E-Rate funding; and

- Distribute E-Rate funds fairly in accordance with FCC rules and funding priorities, and when changes are needed in the rules or in their interpretation, require that adequate notice is provided.

Since prior to the creation of E-Rate, IBM has had a strong corporate commitment to education. Our company has launched multi-million dollar programs to share IBM's cutting-edge technology with schools and provide financial assistance to economically-disadvantaged school districts. For example, under IBM's Reinventing Education program, we have provided over $65 million in research, technology, technical expertise and donations to school districts throughout the country since 1994.

Because of this commitment, IBM fully supports the Commission's goals in implementing the E-Rate program. IBM believes that a stable, efficient schools and libraries support program is essential to bring advanced technology to millions of our nation's children, preparing them to enter the global, technologically-sophisticated workforce. Our company also supports the FCC's decision to prioritize its funding grants, which first directs funds to the neediest and most isolated school districts and libraries, as well as to the core goals of ensuring connectivity and Internet access.

As a service vendor, IBM has seen first hand the technological leaps schools can make due in large part to E-Rate funding, as these schools could not undertake major technology deployment projects without financial assistance. For example, discounts helped the West Des Moines Community School District install a district-wide management system for financial, employment and state reporting data. E-Rate funding allowed New York City public schools to upgrade from typically having only a few dial-up Internet connections per school in 1998 to putting more than 35,000 classrooms online today. The New York City Board of Education calls Internet use in teachers' daily lessons and students' independent research "an essential component in our educational program."[2] As a participant in projects funded by E-Rate since Funding Year 1, IBM also has noted challenges faced by schools and libraries as they navigate the application and funding processes.

Complexity in E-Rate rules, instability in funding levels, and uncertainty over whether funds will be granted make it extremely difficult for schools and libraries to develop effective and efficient technology implementation plans, prepare applications, and obtain adequate funding for their own contributions, in addition to budgeting funds for ineligible products and services that are required for networks to function. This is especially true for institutions in economically-disadvantaged or rural areas that lack staff dedicated to E-Rate matters. Further increasing complexity, E-Rate procurement rules add additional purchasing

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[2] *See*, Comments of the New York City Board of Education, In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, at 1.

requirements to already detailed state procurement and education laws (designed to promote competition, protect the public fisc, provide forums for improper procurement actions, and punish bidders for rules violations), with which schools are required to comply. We urge, therefore, that the FCC undertake to make the E-Rate rules simple and as consistent year to year as possible. In addition, we urge the Commission to make funding as predictable as possible.

Stability and clarity are critical for schools and libraries to receive the benefits of the E-Rate program. Accordingly, IBM offers the following suggestions:

- IBM believes that denying funding to schools and libraries based on whether they received E-Rate funds in the previous Funding Year would have harmful, unintended consequences. For example, without annual funding, schools can find themselves with an advanced network without the means to pay for monthly service charges or the maintenance support to keep it running. In addition, funding interruptions could suspend progress on multi-year projects, delaying the ultimate delivery of service to classrooms.

- Commission application processing standards should be clear and simple, and rules should be applied consistently. Any changes in standards or rules should be made only prospectively to give schools time to adjust to such changes.

- E-Rate rules should be streamlined and illustrated with multiple, practical examples in guidance materials.

In addition, schools and libraries need timely responses from the Schools and Libraries Division ("SLD") to their Form 471 applications for funding. Delays introduce substantial complications in schools' budgeting and technology deployments. The Commission should be concerned that it is not uncommon for a school or library to wait up to a year or more to learn whether its application was granted. Delays translate directly into the potential loss of state and local matching funds and lost learning opportunities for students. Also, schools that receive approval late in a funding cycle sometimes face a rush job in order to complete a multi-month project by the implementation deadline.

IBM supports the suggestion of commenters in this proceeding that the FCC Form 470 should function merely as a public notice that a school or library is soliciting bids, not as a substitute for solicitations such as a Request for Proposals ("RFP") or other state-approved procurement mechanism. Vendors generally understand that the Form 470 only provides general information about the services sought by schools and libraries, and vendors do not view the Form 470 as a formal solicitation. Consequently, many schools and libraries never receive any responses to their Form 470 postings, and they select vendors based on responses to RFPs or other procurement vehicles in compliance with state and local laws and regulations. This process is completely consistent with the FCC's statements requiring

applicants to follow state and local procurement laws and indicating that, absent contrary evidence, state and local procurement procedures produce a competitive outcome.[3]

We also respectfully suggest that the Commission evaluate the composition of the Board of Directors of the Universal Service Administrative Company to make sure it is comfortable that the diversity of interests affected by Universal Service programs is represented. Schools' and libraries' technology plans and Requests for Proposals increasingly are demanding more sophisticated and integrated networks and services capable of efficiently providing modern voice, data and video communications services, and the FCC should ensure that experts on such systems and their deployment are part of the Board that guides the SLD.

IBM appreciates the difficulties that the FCC and SLD face ensuring program integrity and allocating limited E-Rate funds. We believe, nonetheless, that it is important that such funds be distributed fairly in accordance with established FCC rules and funding priorities. Although there may be cause to change these rules and priorities from time to time, any change should be implemented only after giving schools and libraries adequate notice and an opportunity to comment so that they can adjust their planning. Rapid or unnecessary changes could harm schools and libraries that have developed their plans under the current E-Rate framework. Without consistency of funding rules and priorities over time, schools that have made a good faith effort to craft technology plans within the current framework may find that they are unable to secure funds for key components of their technology deployment. Consequently, they may be unable actually to provide service over networks or effectively utilize communications services that the E-Rate program has already helped purchase. Accordingly, we encourage the Commission to make funding as predictable as possible.

We appreciate this opportunity to present you with these supplementary comments. We would be pleased to provide the Commission with additional information if it would be helpful.

Sincerely,

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[3] *See* 47 CFR § 54.504; Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, *Order*, 14 FCC Rcd 13734 at ¶ 10 ("[W]e can generally rely on local and/or state procurement processes that include a competitive bid requirement as a means to ensure compliance with our competitive bid requirements.").